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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,032	05/02/2006	Gerhard Nuspl	STOLMAR-0009	8138

7590 08/27/2009

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EXAMINER	
LANGEL, WAYNE A	

ART UNIT	PAPER NUMBER
1793	

MAIL DATE	DELIVERY MODE
08/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/578,032	NUSPL ET AL.	
	Examiner	Art Unit	
	Wayne Langel	1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-26,28-31 and 36-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,8-26,28-31 and 36-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 May 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7-12-06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6, 8-26, 28-31 and 36-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wurm et al '024 in view of either Barker et al '026 or Barker et al '935. Wurm et al '024 discloses a process for preparing lithium transition-metal phosphate powder comprising providing an aqueous solution of lithium, iron and phosphate ions and heating at a temperature below 500 C to form a pure homogeneous Li and Fe precursor, evaporating water from the solution so as to produce a solid mixture, and decomposing the solid mixture. (See Paragraghs [0014] through [0018].) The precursor suspension in the process of Wurm et al '024 would be dispersed to no less extent than would the precursor suspension recited in applicants' claims. The difference between the process disclosed by Wurm et al '024, and that recited in applicants' claims, is that Wurm et al '024 does not disclose that the precursor mixture is reacted under hydrothermal conditions. Barker et al '935 and Barker et al '026 both disclose methods for forming lithium transition metal phosphates wherein the precursor mixture is heated under hydrothermal conditions.(See Paragragh [0063] of Barker et al '026, and Paragragh [0057] of Barker et al '935.) It would be obvious from either Barker et al '935 or Barker et al '026 to treat the precursor mixture of Wurm et al '024 under hydrothermal conditions, since Barker et al '935 and Barker et al '026 both establish at

the aforementioned passages that hydrothermal treatment is a conventional method for preparing the active material from the starting materials.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 41-44 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wurm et al '024 or Barker et al '026 or Barker et al '935. No distinction is seen between the lithium iron phosphate disclosed by Wurm et al '024, Barker et al '026 and Barker et al '935, and that which would be formed according to the process recited in applicants' claim 1. There is no evidence on record showing that the lithium iron phosphate recited in claims 41-44 would necessarily be different from that of Wurm et al '024, Barker et al '026 or Barker et al '935.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6, 8-26, 28-31 and 36-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation of "selected from…and" is improper Markush terminology. In claim 24, "such as" renders the scope of the claim vague and indefinite. Also in claim 24, it is indefinite as to wgat would

constitute an "Ultraturrax" stirrer. In claim 1, "series,; in" and "D90 value...are" are ungrammatical and therefor indefinite.

The other references are made of record for disclosing various active materials for electrodes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Langel whose telephone number is 571-272-1353. The examiner can normally be reached on Monday through Friday, 8 am - 3:30 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Wayne Langel/

Primary Examiner, Art Unit 1793

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